

Senate Bill No. 2002

CHAPTER 1003

An act to amend Sections 2924f and 3440.5 of the Civil Code, to amend Sections 1201, 2210, 2502, 9102, 9104, 9205, 9210, 9307, 9311, 9317, 9319, 9323, 9325, 9331, 9336, 9407, 9408, 9502, 9505, 9509, 9513, 9519, 9524, 9525, 9608, 9611, 9613, 9615, 9625, 9626, 9702, and 9705 of, to amend and renumber Section 9708 of, to amend, renumber, and add Section 9707 of, and to repeal and add Sections 9403, 9404, 9405, 9406, and 9409 of, the Commercial Code, and to amend Sections 12183 and 12194 of, and to add Section 27291 to, the Government Code, relating to commercial law.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2002, Committee on Judiciary. Commercial law: secured transactions.

Existing provisions of the Uniform Commercial Code govern security interests in personal property and fixtures, as well as certain sales of accounts, contract rights, and chattel paper. These provisions will, pursuant to Chapter 991 of the Statutes of 1999, be repealed and replaced with new provisions concerning these subjects, to be operative on July 1, 2001. However, because Chapter 991 of the Statutes of 1999 contains a provision deferring to other bills passed by the Legislature during the 1999 calendar year, certain existing provisions relating to fees charged by the Secretary of State, which were enacted as Chapter 1000 of the Statutes of 1999, were not repealed because they were the subject of legislation in 1999, and those existing provisions will duplicate and be inconsistent with the new provisions enacted by Chapter 991 of the Statutes of 1999 as of July 1, 2001.

This bill would repeal those existing duplicate provisions as of July 1, 2001, and would reenact the new provisions previously enacted by Chapter 991 of the Statutes of 1999 to incorporate the changes of Chapter 1000 of the Statutes of 1999, thereby reconciling both chapters. This bill would make other technical, conforming, and clarifying changes.

The people of the State of California do enact as follows:

SECTION 1. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, “property” means real property or a leasehold estate therein, and “calendar week” means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone

number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating



the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,
(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be

held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars (\$50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 2. Section 3440.5 of the Civil Code, as amended by Chapter 991 of the Statutes of 1999, is amended to read:

3440.5. (a) This chapter does not affect the rights of a secured party who, for value and in good faith, acquires a security interest in the transferred personal property from the transferee, or from the transferee's successor in interest, if the transferor is no longer in possession of the personal property at the time the security interest attaches.

(b) Additionally, except as provided in Section 3440.3, this chapter does not affect the rights of a secured party who acquires a security interest from the transferee, or from the transferee's successor in interest, in the personal property, if all of the following conditions are satisfied:

(1) On or before the date the security agreement is executed, the intended debtor or secured party files a financing statement with respect to the property transferred, signed by the intended debtor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but shall use the terms "transferor" in lieu of "debtor," "transferee" in lieu of "secured party," and "secured party" in lieu of "assignee of secured party." The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to such a statement. For the purpose of indexing, and in any certification of search, the Secretary of State may refer to any financing statement filed pursuant to this paragraph as a financing statement under the Commercial Code and may describe the transferor as a debtor and the transferee as a secured party.



Compliance with this paragraph shall, however, not perfect the security interest of the secured party. Perfection of such a security interest shall be governed by Division 9 (commencing with Section 9101) of the Commercial Code.

(2) The intended debtor or secured party publishes a notice of the transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date of execution by the intended debtor of the intended security agreement. The notice shall contain the names and addresses of the transferor and transferee and of the intended debtor and secured party, a general statement of the character of the personal property transferred and intended to be subject to the security interest, the location of the personal property, and the date on or after which the security agreement is to be executed by the intended debtor.

SEC. 3. Section 1201 of the Commercial Code is amended to read:

1201. The following definitions apply for purposes of this code, subject to additional definitions contained in the subsequent divisions of this code that apply to specific divisions or chapters thereof, and unless the context otherwise requires:

(1) “Action,” in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing, usage of trade, and course of performance as provided in this code (Sections 1205, 2208, and 10207). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable, and otherwise by the law of contracts (Section 1103). (Compare “contract.”)

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) “Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a “bill of lading” is conclusive evidence of that intention. “Bill of lading” includes an airbill. “Airbill” means a document serving for air transportation as a bill of lading does for

marine or rail transportation, and includes an air consignment note or air waybill.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Division 2 (commencing with Section 2101) may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) “Conspicuous.” A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is “conspicuous” if it is in larger or other contrasting type or color, except that in a telegram any stated term is “conspicuous.” Whether a term or clause is “conspicuous” or not is for decision by the court.

(11) “Contract” means the total legal obligation that results from the parties’ agreement as affected by this code and any other applicable rules of law. (Compare “agreement.”)

(12) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

(13) “Defendant” includes a person in the position of defendant in a cross-action or counterclaim.

(14) “Delivery,” with respect to instruments, documents of title, chattel paper, or certificated securities, means the voluntary transfer of possession.

(15) “Document of title” includes a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, or compress receipt, and

any other document that, in the regular course of business or financing, is treated as adequately evidencing that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document shall purport to be issued by a bailee and purport to cover goods in the bailee's possession that either are identified as or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible," with respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods that are not fungible shall be deemed fungible for the purposes of this code to the extent that, under a particular agreement or document, unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder," with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay or, where a credit so engages, to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business, cannot pay his or her debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when any of the following occurs:

(a) He or she has actual knowledge of it.

(b) He or she has received a notice or notification of it.

(c) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn," or a word or phrase of similar import, refers to knowledge rather than to reason to know.



The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person “notifies” or “gives” a notice or notification to another by taking those steps that may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person “receives” a notice or notification when any of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of these communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his or her regular duties, or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) “Organization” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) “Party,” as distinct from “third party,” means a person who has engaged in a transaction or made an agreement within this division.

(30) “Person” includes an individual or an organization. (See Section 1102.)

(31) “Purchase” includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(32) “Purchaser” means a person who takes by purchase.

(33) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(34) “Representative” includes an agent, an officer of a corporation or association, a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(35) “Rights” includes remedies.

(36) (a) “Security interest” means an interest in personal property or fixtures that secures payment or performance of an obligation. The term also includes any interest of a cosignor and a buyer of accounts, chattel paper, a payment intangible, or a

promissory note in a transaction that is subject to Division 9 (commencing with Section 9101). The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2401 is not a “security interest,” but a buyer may also acquire a “security interest” by complying with Division 9 (commencing with Section 9101). Except as otherwise provided in Section 2505, the right of a seller or lessor of goods under Division 2 (commencing with Section 2101) or Division 10 (commencing with Section 10101) to retain or acquire possession of the goods is not a “security interest,” but a seller or lessor may also acquire a “security interest” by complying with Division 9 (commencing with Section 9101). The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a “security interest.”

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and any of the following conditions applies:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides one or more of the following:

(i) That the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or greater than the fair market value of the goods at the time the lease is entered into.

(ii) That the lessee assumes the risk of loss of the goods, or agrees to pay the taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods.

(iii) That the lessee has an option to renew the lease or to become the owner of the goods.

(iv) That the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.



(v) That the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(vi) In the case of a motor vehicle, as defined in Section 415 of the Vehicle Code, or a trailer, as defined in Section 630 of that code, that is not to be used primarily for personal, family, or household purposes, that the amount of rental payments may be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the vehicle or trailer. Nothing in this subparagraph affects the application or administration of the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code).

(d) For purposes of this subdivision (36), all of the following apply:

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(37) "Send," in connection with any writing or notice, means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there is none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time in which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words "with return receipt requested" are also used.



(38) “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(39) “Surety” includes guarantor.

(40) “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(41) “Term” means that portion of an agreement that relates to a particular matter.

(42) “Unauthorized” signature means one made without actual, implied, or apparent authority, and includes a forgery.

(43) “Value.” Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4210, and 4211), a person gives “value” for rights if he or she acquires them in any of the following ways:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery pursuant to a preexisting contract for purchase.

(d) Generally, in return for any consideration sufficient to support a simple contract.

(44) “Warehouse receipt” means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a “warehouse receipt” is conclusive evidence of that intention.

(45) “Written” or “writing” includes printing, typewriting, or any other intentional reduction to tangible form.

SEC. 4. Section 2210 of the Commercial Code is amended to read:

2210. (1) A party may perform his or her duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his or her original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in Section 9406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him or her by his or her contract, or impair materially his or her chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor’s due performance of his or her entire obligation can be assigned despite agreement otherwise.



(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of, or increases materially the burden or risk imposed on, the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subdivision (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (A) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and, unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor, and its acceptance by the assignee constitutes a promise by him or her to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may, without prejudice to his or her rights against the assignor, demand assurances from the assignee (Section 2609).

SEC. 5. Section 2502 of the Commercial Code is amended to read:

2502. (1) Subject to subdivisions (2) and (3), and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he or she has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if either:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract.

(b) In all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under paragraph (a) of subdivision (1) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.



(3) If the identification creating his or her special property has been made by the buyer, he or she acquires the right to recover the goods only if they conform to the contract for sale.

SEC. 6. Section 9102 of the Commercial Code is amended to read:

9102. (a) In this division:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting,” except as used in “accounting for,” means a record that is all of the following:

(A) Authenticated by a secured party.

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record.

(C) Identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest, other than a security interest, in farm products that meets all of the following conditions:

(A) It secures payment or performance of an obligation for either of the following:

(i) Goods or services furnished in connection with a debtor’s farming operation.



(ii) Rent on real property leased by a debtor in connection with its farming operation.

(B) It is created by statute in favor of a person that does either of the following:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation.

(ii) Leased real property to a debtor in connection with the debtor's farming operation.

(C) Its effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means either of the following:

(A) Oil, gas, or other minerals that are subject to a security interest that does both of the following:

(i) Is created by a debtor having an interest in the minerals before extraction.

(ii) Attaches to the minerals as extracted.

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means to do either of the following:

(A) To sign.

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with

the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes all of the following:

(A) Proceeds to which a security interest attaches.

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold.

(C) Goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which either of the following conditions is satisfied:

(A) The claimant is an organization.

(B) The claimant is an individual and both of the following conditions are satisfied regarding the claim:

(i) It arose in the course of the claimant’s business or profession.

(ii) It does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is either of the following:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws.

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that is either of the following:

(A) Is registered as a futures commission merchant under federal commodities law.

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means to do any of the following:

(A) To send a written or other tangible record.

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record.

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and all of the following conditions are satisfied:

(A) The merchant satisfies all of the following conditions:

(i) He or she deals in goods of that kind under a name other than the name of the person making delivery.

(ii) He or she is not an auctioneer.

(iii) He or she is not generally known by its creditors to be substantially engaged in selling the goods of others.

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery.

(C) The goods are not consumer goods immediately before delivery.

(D) The transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which both of the following conditions are satisfied:

(A) An individual incurs an obligation primarily for personal, family, or household purposes.

(B) A security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means any of the following:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes.

(C) A consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in subdivision (2) of Section 7201.

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

(A) Crops grown, growing, or to be grown, including both of the following:

(i) Crops produced on trees, vines, and bushes.

(ii) Aquatic goods produced in aquacultural operations.

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.

(C) Supplies used or produced in a farming operation.

(D) Products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to subdivision (a) of Section 9519.

(37) “Filing office” means an office designated in Section 9501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to Section 9526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subdivisions (a) and (b) of Section 9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper,

commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health care insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which are any of the following:

(A) Leased by a person as lessor.

(B) Held by a person for sale or lease or to be furnished under a contract of service.

(C) Furnished by a person under a contract of service.



(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization,” with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) (A) “Lien creditor” means any of the following:

(i) A creditor that has acquired a lien on the property involved by attachment, levy, or the like.

(ii) An assignee for benefit of creditors from the time of assignment.

(iii) A trustee in bankruptcy from the date of the filing of the petition.

(iv) A receiver in equity from the time of appointment.

(B) “Lien creditor” does not include a creditor who by filing a notice with the Secretary of State has acquired only an attachment or judgment lien on personal property, or both.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body-feet or more in width or 40 body-feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) “Manufactured home transaction” means a secured transaction that satisfies either of the following:

(A) It creates a purchase money security interest in a manufactured home, other than a manufactured home held as inventory.

(B) It is a secured transaction in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.



(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under subdivision (d) of Section 9203 by a security agreement previously entered into by another person.

(57) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor,” except as used in subdivision (c) of Section 9310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subdivision (d) of Section 9203.

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to,” with respect to an individual, means any of the following:

(A) The spouse of the individual.

(B) A brother, brother-in-law, sister, or sister-in-law of the individual.

(C) An ancestor or lineal descendant of the individual or the individual’s spouse.

(D) Any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to,” with respect to an organization, means any of the following:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization.

(B) An officer or director of, or a person performing similar functions with respect to, the organization.

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A).

(D) The spouse of an individual described in subparagraph (A), (B), or (C).

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) “Proceeds,” except as used in subdivision (b) of Section 9609, means any of the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) “Proposal” means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9620, 9621, and 9622.

(67) “Public finance transaction” means a secured transaction in connection with which all of the following conditions are satisfied:

(A) Debt securities are issued.

(B) All or a portion of the securities issued have an initial stated maturity of at least 20 years.

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

(69) “Record,” except as used in “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) “Registered organization” means an organization organized solely under the law of a single state or the United States and as to

which the state or the United States must maintain a public record showing the organization to have been organized.

(71) “Secondary obligor” means an obligor to the extent that either of the following conditions are satisfied:

(A) The obligor’s obligation is secondary.

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) “Secured party” means any of the following:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.

(B) A person that holds an agricultural lien.

(C) A consignor.

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.

(F) A person that holds a security interest arising under Section 2401, 2505, 4210, or 5118, or under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.

(73) “Security agreement” means an agreement that creates or provides for a security interest.

(74) “Send,” in connection with a record or notification, means to do either of the following:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances.

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(78) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) “Termination statement” means an amendment of a financing statement that does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) “Transmitting utility” means a person primarily engaged in the business of any of the following:

(A) Operating a railroad, subway, street railway, or trolley bus.

(B) Transmitting communications electrically, electromagnetically, or by light.

(C) Transmitting goods by pipeline or sewer.

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other divisions apply to this division:

“Applicant”	Section 5102.
“Beneficiary”	Section 5102.
“Broker”	Section 8102.
“Certificated security”	Section 8102.
“Check”	Section 3104.
“Clearing corporation”	Section 8102.
“Contract for sale”	Section 2106.
“Customer”	Section 4104.
“Entitlement holder”	Section 8102.
“Financial asset”	Section 8102.
“Holder in due course”	Section 3302.
“Issuer” (with respect to a letter of credit or letter-of-credit right)	Section 5102.
“Issuer” (with respect to a security)	Section 8201.
“Lease”	Section 10103.
“Lease agreement”	Section 10103.
“Lease contract”	Section 10103.
“Leasehold interest”	Section 10103.
“Lessee”	Section 10103.
“Lessee in ordinary course of business”	Section 10103.
“Lessor”	Section 10103.
“Lessor’s residual interest”	Section 10103.
“Letter of credit”	Section 5102.

“Merchant”	Section 2104.
“Negotiable instrument”	Section 3104.
“Nominated person”	Section 5102.
“Note”	Section 3104.
“Proceeds of a letter of credit”	Section 5114.
“Prove”	Section 3103.
“Sale”	Section 2106.
“Securities account”	Section 8501.
“Securities intermediary”	Section 8102.
“Security”	Section 8102.
“Security certificate”	Section 8102.
“Security entitlement”	Section 8102.
“Uncertificated security”	Section 8102.

(c) Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 7. Section 9104 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9104. (a) A secured party has control of a deposit account if any of the following conditions is satisfied:

(1) The secured party is the bank with which the deposit account is maintained.

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor.

(3) The secured party becomes the bank’s customer with respect to the deposit account.

(b) A secured party that has satisfied subdivision (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

SEC. 8. Section 9205 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9205. (a) A security interest is not invalid or fraudulent against creditors solely because either of the following applies:

(1) The debtor has the right or ability to do any of the following:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods.

(B) Collect, compromise, enforce, or otherwise deal with collateral.

(C) Accept the return of collateral or make repossessions.

(D) Use, commingle, or dispose of proceeds.

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

SEC. 9. Section 9210 of the Commercial Code is amended to read:

9210. (a) In this section:

(1) “Request” means a record of a type described in paragraph (2), (3), or (4).

(2) “Request for an accounting” means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) “Request regarding a list of collateral” means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) “Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subdivisions (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt as follows:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting.

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record that contains both of the following:

(1) It disclaims any interest in the collateral.

(2) If known to the recipient, it provides the name and mailing address of any assignee of or successor to the recipient’s interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record that contains both of the following:

(1) It disclaims any interest in the obligations.

(2) If known to the recipient, it provides the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.

SEC. 10. Section 9307 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9307. (a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subdivision (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subdivision (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subdivisions (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subdivision (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located in any of the following jurisdictions:

(1) In the state that the law of the United States designates, if the law designates a state of location.

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location.

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subdivision (e) or (f) notwithstanding either of the following:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization.

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this chapter.

SEC. 11. Section 9311 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9311. (a) Except as otherwise provided in subdivision (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to any of the following:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subdivision (a) of Section 9310.

(2) (A) The provisions of the Vehicle Code which require registration of a vehicle or boat.

(B) The provisions of the Health and Safety Code which require registration of a mobilehome or commercial coach, except that during any period in which collateral is inventory, the filing provisions of Chapter 5 (commencing with Section 9501) apply to a security interest in that collateral.

(C) The provisions of the Health and Safety Code which require registration of all interests in approved air contaminant emission reductions (Sections 40709 to 40713, inclusive, of the Health and Safety Code).

(3) A certificate of title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subdivision (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this division. Except as otherwise provided in subdivision (d), in Section 9313, and in subdivisions (d) and (e) of Section 9316 for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subdivision (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subdivision (d) and in subdivisions (d) and (e) of Section 9316, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subdivision (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this division.

(d) During any period in which collateral subject to a statute specified in paragraph (2) of subdivision (a) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

SEC. 12. Section 9317 of the Commercial Code is amended to read:

9317. (a) A security interest or agricultural lien is subordinate to the rights of both of the following:

(1) A person entitled to priority under Section 9322.

(2) Except as otherwise provided in subdivision (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected, or one of the conditions specified in paragraph (3) of subdivision (b) of Section 9203 is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subdivision (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subdivision (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.



(e) Except as otherwise provided in Sections 9320 and 9321, if a person files a financing statement with respect to a purchase money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

SEC. 13. Section 9319 of the Commercial Code is amended to read:

9319. (a) Except as otherwise provided in subdivision (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this division determines the rights and title of a consignee while goods are in the consignee's possession if, under this chapter, a perfected security interest held by the consignor would have priority over the rights of the creditor.

SEC. 14. Section 9323 of the Commercial Code is amended to read:

9323. (a) Except as otherwise provided in subdivision (c), for purposes of determining the priority of a perfected security interest under paragraph (1) of subdivision (a) of Section 9322, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that satisfies both of the following conditions:

(1) It is made while the security interest is perfected only under either of the following:

(A) Under Section 9309 when it attaches.

(B) Temporarily under subdivision (e), (f), or (g) of Section 9312.

(2) It is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 9309 or under subdivision (e), (f), or (g) of Section 9312.

(b) Except as otherwise provided in subdivision (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless either of the following conditions is satisfied:

(1) The advance is made without knowledge of the lien.

(2) The advance is made pursuant to a commitment entered into without knowledge of the lien.

(c) Subdivisions (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subdivision (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of the following:

(1) The time the secured party acquires knowledge of the buyer's purchase.

(2) Forty-five days after the purchase.

(e) Subdivision (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Except as otherwise provided in subdivision (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of either of the following:

(1) The time the secured party acquires knowledge of the lease.

(2) Forty-five days after the lease contract becomes enforceable.

(g) Subdivision (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

SEC. 15. Section 9325 of the Commercial Code is amended to read:

9325. (a) Except as otherwise provided in subdivision (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if all of the following apply:

(1) The debtor acquired the collateral subject to the security interest created by the other person.

(2) The security interest created by the other person was perfected when the debtor acquired the collateral.

(3) There is no period thereafter when the security interest is unperfected.

(b) Subdivision (a) subordinates a security interest only if either of the following conditions is satisfied:

(1) The security interest otherwise would have priority solely under subdivision (a) of Section 9322 or under Section 9324.

(2) The security interest arose solely under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.

SEC. 16. Section 9331 of the Commercial Code is amended to read:

9331. (a) This division does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Division 3 (commencing with Section 3101), Division 7 (commencing with Section 7101), and Division 8 (commencing with Section 8101).

(b) This division does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Division 8 (commencing with Section 8101).

(c) Filing under this division does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subdivisions (a) and (b).

SEC. 17. Section 9336 of the Commercial Code is amended to read:

9336. (a) In this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subdivision (c) is perfected.

(e) Except as otherwise provided in subdivision (f), the other provisions of this chapter determine the priority of a security interest that attaches to the product or mass under subdivision (c).

(f) If more than one security interest attaches to the product or mass under subdivision (c), the following rules determine priority:

(1) A security interest that is perfected under subdivision (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subdivision (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

SEC. 18. Section 9403 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 19. Section 9403 of the Commercial Code, as amended by Section 14 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 20. Section 9403 is added to the Commercial Code, to read:

9403. (a) In this section, “value” has the meaning provided in subdivision (a) of Section 3303.

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment that satisfies all of the following conditions:

(1) It is taken for value.

(2) It is taken in good faith.

(3) It is taken without notice of a claim of a property or possessory right to the property assigned.

(4) It is taken without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under subdivision (a) of Section 3305.

(c) Subdivision (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under subdivision (b) of Section 3305.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this division requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement, then both of the following apply:

(1) The record has the same effect as if the record included such a statement.

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subdivision (d), this section does not displace law other than this division which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

SEC. 21. Section 9404 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 22. Section 9404 of the Commercial Code, as amended by Section 15 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 23. Section 9404 is added to the Commercial Code, to read:

9404. (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subdivisions (b) to (e), inclusive, the rights of an assignee are subject to both of the following:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract.

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subdivision (c) and except as otherwise provided in subdivision (d), the claim of an account debtor against an assignor may be asserted against an assignee under subdivision (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual

and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this division requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health care insurance receivable.

SEC. 24. Section 9405 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 25. Section 9405 of the Commercial Code, as amended by Section 16 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 26. Section 9405 is added to the Commercial Code, to read:

9405. (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subdivision is subject to subdivisions (b) to (d), inclusive.

(b) Subdivision (a) applies to the extent that either of the following apply:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance.

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under subdivision (a) of Section 9406.

(c) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health care insurance receivable.

SEC. 27. Section 9406 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 28. Section 9406 of the Commercial Code, as amended by Section 17 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 29. Section 9406 is added to the Commercial Code, to read:

9406. (a) Subject to subdivisions (b) to (i), inclusive, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been

assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subdivision (h), notification is ineffective under subdivision (a) as follows:

(1) If it does not reasonably identify the rights assigned.

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this division.

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if any of the following conditions is satisfied:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee.

(B) A portion has been assigned to another assignee.

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subdivision (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subdivision (a).

(d) Except as otherwise provided in subdivision (e) and in Sections 9407 and 10303, and subject to subdivision (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it does either of the following:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note.

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subdivision (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in Sections 9407 and 10303, and subject to subdivisions (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or



chattel paper is ineffective to the extent that the rule of law, statute, or regulation does either of the following:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper.

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subdivision (h), an account debtor may not waive or vary its option under paragraph (3) of subdivision (b).

(h) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable.

(j) Subdivision (f) does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a claim or right to receive compensation for injuries or sickness as described in paragraph (1) or (2) of subdivision (a) of Section 104 of Title 26 of the United States Code, as amended, or a claim or right to receive benefits under a special needs trust as described in paragraph (4) of subdivision (d) of Section 1396p of Title 42 of the United States Code, as amended, to the extent that subdivision (f) is inconsistent with those laws.

SEC. 30. Section 9407 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9407. (a) Except as otherwise provided in subdivision (b), a term in a lease agreement is ineffective to the extent that it does either of the following:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods.

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in subdivision (g) of Section 10303, a term described in paragraph (2) of subdivision (a) is effective to the extent that there is either of the following:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term.

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subdivision (d) of Section 10303 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

SEC. 31. Section 9408 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9408. (a) Except as otherwise provided in subdivision (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subdivision (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or the creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination,



right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subdivision (c) would be effective under law other than this division but is ineffective under subdivision (a) or (c), all of the following rules apply with respect to the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) It is not enforceable against the person obligated on the promissory note or the account debtor.

(2) It does not impose a duty or obligation on the person obligated on the promissory note or the account debtor.

(3) It does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

(4) It does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible.

(5) It does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor.

(6) It does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

(e) Subdivision (c) does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a claim or right to receive compensation for injuries or sickness as described in paragraph (1) or (2) of subdivision (a) of Section 104 of Title 26 of the United States Code, as amended, or a claim or right to receive benefits under a special needs trust as described in paragraph (4) of subdivision (d) of Section 1396p of Title 42 of the United States Code, as amended, to the extent that subdivision (c) is inconsistent with those laws.

SEC. 32. Section 9409 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 33. Section 9409 of the Commercial Code, as amended by Section 18 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 34. Section 9409 is added to the Commercial Code, to read:

9409. (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which

prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right.

(2) It provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subdivision (a) but would be effective under law other than this division or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, all of the following rules apply with respect to the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) It is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary.

(2) It imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary.

(3) It does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

SEC. 35. Section 9502 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9502. (a) Subject to subdivision (b), a financing statement is sufficient only if it satisfies all of the following conditions:

(1) It provides the name of the debtor.

(2) It provides the name of the secured party or a representative of the secured party.

(3) It indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in subdivision (b) of Section 9501, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subdivision (a) and also satisfy all of the following conditions:

(1) Indicate that it covers this type of collateral.

(2) Indicate that it is to be recorded in the real property records.

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property.



(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if all of the following conditions are satisfied:

(1) The record indicates the goods or accounts that it covers.

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut.

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records.

(4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

SEC. 36. Section 9505 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9505. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in subdivision (a) of Section 9311, using the terms “consignor,” “consignee,” “lessor,” “lessee,” “bailor,” “bailee,” “licensor,” “licensee,” “owner,” “registered owner,” “buyer,” “seller,” or words of similar import, instead of the terms “secured party” and “debtor.”

(b) This chapter applies to the filing of a financing statement under subdivision (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under subdivision (b) of Section 9311, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

SEC. 37. Section 9509 of the Commercial Code is amended to read:

9509. (a) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subdivision (b) or (c).

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering both of the following:

(1) The collateral described in the security agreement.

(2) Property that becomes collateral under paragraph (2) of subdivision (a) of Section 9315, whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under paragraph (1) of subdivision (a) of Section 9315, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under paragraph (2) of subdivision (a) of Section 9315.

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The secured party of record authorizes the filing.

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by subdivision (a) or (c) of Section 9513, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subdivision (d).

SEC. 38. Section 9513 of the Commercial Code is amended to read:

9513. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and either of the following conditions is satisfied:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subdivision (a), a secured party shall cause the secured party of record to file the termination statement in accordance with either of the following rules:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subdivision (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if any of the following conditions is satisfied:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation.

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession.

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 9510, for purposes of subdivision (g) of Section 9519, subdivision (a) of Section 9522, and subdivision (c) of Section 9523, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

SEC. 39. Section 9519 of the Commercial Code is amended to read:

9519. (a) For each record filed in a filing office, the filing office shall do all of the following:

(1) Assign a unique number to the filed record.

(2) Create a record that bears the number assigned to the filed record and the date and time of filing.

(3) Maintain the filed record for public inspection.

(4) Index the filed record in accordance with subdivisions (c), (d), and (e).

(b) Except as otherwise provided in subdivision (i), a file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number.

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subdivisions (d) and (e), the filing office shall do both of the following:



(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be recorded and the filing office shall index it in accordance with both of the following rules:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described.

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under subdivision (a) of Section 9514 or an amendment filed under subdivision (b) of Section 9514 in accordance with both of the following rules:

(1) Under the name of the assignor as grantor.

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability to do both of the following:

(1) Retrieve a record by the name of the debtor and by either of the following:

(A) If the filing office is described in paragraph (1) of subdivision (a) of Section 9501, by the file number assigned to the initial financing statement to which the record relates and the date that the record was filed or recorded.

(B) If the filing office is described in paragraph (2) of subdivision (a) of Section 9501, by the file number assigned to the initial financing statement to which the record relates.

(2) Associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement

naming the debtor lapses under Section 9515 with respect to all secured parties of record.

(h) Except as otherwise provided in subdivision (i), the filing office shall perform the acts required by subdivisions (a) to (e), inclusive, at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) Subdivisions (b) and (h) do not apply to a filing office described in paragraph (1) of subdivision (a) of Section 9501.

SEC. 40. Section 9524 of the Commercial Code is amended to read:

9524. Delay by the filing office beyond a time limit prescribed by this chapter is excused if both of the following conditions are satisfied:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office.

(2) The filing office exercises reasonable diligence under the circumstances.

SEC. 41. Section 9525 of the Commercial Code is amended to read:

9525. (a) Except as otherwise provided in subdivision (d), the fee for filing and indexing a record under this chapter is set forth in subdivisions (a), (b), and (c) of Section 12194 of the Government Code.

(b) The number of names required to be indexed does not affect the amount of the fee in subdivision (a).

(c) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is as follows:

(1) Ten dollars (\$10) if the request is communicated in writing.

(2) Five dollars (\$5) if the request is communicated by another medium authorized by a rule adopted by the filing office.

(d) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subdivision (c) of Section 9502. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

SEC. 42. Section 9608 of the Commercial Code is amended to read:

9608. (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made.

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subparagraph (C) of paragraph (1).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and except as otherwise provided in subdivision (b) of Section 9626, the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency. Subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds applies only if the security agreement provides that the debtor is entitled to any surplus.

SEC. 43. Section 9611 of the Commercial Code is amended to read:

9611. (a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition.

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subdivision (d), a secured party that disposes of collateral under Section 9610 shall send to the persons specified in subdivision (c) a reasonable authenticated notification of disposition.

(c) To comply with subdivision (b), the secured party shall send an authenticated notification of disposition to all of the following persons:



(1) The debtor.

(2) Any secondary obligor.

(3) If the collateral is other than consumer goods to both of the following persons:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral.

(B) Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement with respect to which all of the following apply:

(i) It identified the collateral.

(ii) It was indexed under the debtor's name as of that date.

(iii) It was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date.

(C) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subdivision (a) of Section 9311.

(d) Subdivision (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed in subparagraph (B) of paragraph (3) of subsection (c) if it satisfies both of the following conditions:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subparagraph (B) of paragraph (3) of subdivision (c).

(2) Before the notification date, the secured party either:

(A) Did not receive a response to the request for information.

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

SEC. 44. Section 9613 of the Commercial Code is amended to read:

9613. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification does all of the following:

(A) It describes the debtor and the secured party.

(B) It describes the collateral that is the subject of the intended disposition.

(C) It states the method of intended disposition.

(D) It states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting.

(E) It states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes either of the following:

(A) Information not specified by that paragraph.

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in subdivision (3) of Section 9614, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: _____

[Name of debtor, obligor, or other person to which the
notification is sent]

From: _____

[Name, address, and telephone number of
secured party]

Name of Debtor(s): _____

[Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable]

the _____ [to the highest qualified bidder in public

[describe collateral]

as follows:]

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]



We will sell [or license, as applicable] the _____
(describe collateral)
privately sometime after _____.
[day and date]

You are entitled to an accounting of the unpaid indebtedness
secured by the property that we intend to sell [or lease or
license, as applicable] [for a charge of \$_____]. You may request
an accounting by calling us at _____.
[telephone number]

SEC. 45. Section 9615 of the Commercial Code is amended to read:

9615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9610 in the following order to each of the following:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made.

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if both of the following conditions are satisfied:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds or notice of the levy of attachment or execution before distribution of the proceeds is completed.

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor.

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under paragraph (3) of subdivision (a).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9610 unless the failure to do so would be commercially unreasonable. A secured party that

applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subdivision (a) and permitted by subdivision (c), both of the following apply:

(1) Unless paragraph (4) of subdivision (a) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure.

(2) Subject to subdivision (b) of Section 9626, the obligor is liable for any deficiency.

(e) (1) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, both of the following apply:

(A) The debtor is not entitled to any surplus.

(B) The obligor is not liable for any deficiency.

(2) Subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds and the liability of the secured party applies only if the security agreement provides that the debtor is entitled to any surplus.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this chapter to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if both of the following apply:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor.

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) The following rules apply with respect to a secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) The secured party takes the cash proceeds free of the security interest or other lien.

(2) The secured party is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien.

(3) The secured party is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

SEC. 46. Section 9625 of the Commercial Code is amended to read:

9625. (a) If it is established that a secured party is not proceeding in accordance with this division, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subdivisions (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this division. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 9628, a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subdivision (b) for its loss.

(d) A debtor whose deficiency is eliminated under Section 9626 may recover damages for the loss of any surplus. However, in a transaction other than a consumer transaction, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9626 may not otherwise recover under subdivision (b) for noncompliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subdivision (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from any of the following persons:

(1) A person that fails to comply with Section 9208.

(2) A person that fails to comply with Section 9209.

(3) A person that files a record that the person is not entitled to file under subdivision (a) of Section 9509.

(4) A person that fails to cause the secured party of record to file or send a termination statement as required by subdivision (a) or (c) of Section 9513.

(5) A person that fails to comply with paragraph (1) of subdivision (b) of Section 9616 and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(6) A person that fails to comply with paragraph (2) of subdivision (b) of Section 9616.

(f) A debtor or consumer obligor may recover damages under subdivision (b) and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 9210. A recipient of a request under Section 9210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subdivision.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9210, the secured party may claim a security interest only as shown in the list

or statement included in the request as against a person that is reasonably misled by the failure.

SEC. 47. Section 9626 of the Commercial Code is amended to read:

9626. (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this chapter.

(3) Except as otherwise provided in Section 9628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of either of the following:

(A) The proceeds of the collection, enforcement, disposition, or acceptance.

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of subparagraph (B) of paragraph (3), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under subdivision (f) of Section 9615, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) In a consumer transaction, the following rules apply:

(1) In an action in which a deficiency or a surplus is an issue:

(A) A secured party has the burden of proving compliance with the provisions of this chapter relating to collection, enforcement, disposition, and acceptance whether or not the debtor or a secondary obligor places the secured party's compliance in issue.

(B) If a deficiency or surplus is calculated under subdivision (f) of Section 9615, the secured party has the burden of establishing that the

amount of proceeds of the disposition is not significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(2) The debtor or any secondary obligor is liable for any deficiency only if all of the following conditions are met:

(A) It is not otherwise agreed or otherwise provided in the Retail Installment Sales Act (Chapter 1 (commencing with Section 1801), Title 2, Part 4, Division 3, Civil Code), and, in particular, Section 1812.5 of the Civil Code or any other statute.

(B) The debtor and obligor were given notice, in accordance with Sections 9611, 9612, and 9613, or Section 9614, as applicable, of the disposition of the collateral.

(C) The collection, enforcement, disposition, and acceptance by the secured party were conducted in good faith and in a commercially reasonable manner.

(3) Upon entry of a final judgment that the debtor or obligor is not liable for a deficiency by reason of paragraph (2) or subdivision (f) of Section 9615, the secured party may neither obtain a deficiency judgment nor retain a security interest in any other collateral of the debtor or obligor that secured the indebtedness for which the debtor or obligor is no longer liable.

(4) If, subsequent to a disposition that does not satisfy any one or more of the conditions set forth in paragraph (2), or subsequent to a disposition that is subject to subdivision (f) of Section 9615, the secured party disposes pursuant to this section of other collateral securing the same indebtedness, the debtor or obligor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (2) or subdivision (f) of Section 9615, recover the proceeds realized from the subsequent dispositions, as well as any damages to which the debtor may be entitled if the subsequent disposition is itself noncomplying or otherwise wrongful.

(5) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (b) of Section 9625, or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law. A debtor or obligor in a consumer transaction shall not have any damages owed to it reduced by the amount of any deficiency that would have resulted had the disposition of the collateral by the secured party been conducted in conformity with this division.

(6) The secured party shall account to the debtor for any surplus, except as provided in Section 701.040 of the Code of Civil Procedure.

SEC. 48. Section 9702 of the Commercial Code is amended to read:

9702. (a) Except as otherwise provided in this chapter, this division applies to a transaction or lien within its scope, even if the

transaction or lien was entered into or created before this division takes effect.

(b) Except as otherwise provided in subdivision (c) and in Sections 9703 to 9709, inclusive, both of the following rules apply:

(1) Transactions and liens that were not governed by former Division 9, were validly entered into or created before July 1, 2001, and would be subject to this act if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001.

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this division or by the law that otherwise would apply if this division had not taken effect.

(c) This division does not affect an action, case, or proceeding commenced before July 1, 2001.

SEC. 49. Section 9705 of the Commercial Code is amended to read:

9705. (a) If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this division on or before July 1, 2002. An attached security interest becomes unperfected on July 1, 2002, unless the security interest becomes a perfected security interest under this division before that date.

(b) The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this division.

(c) This division does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9103. However, except as otherwise provided in subdivisions (d) and (e) and in Section 9706, the financing statement ceases to be effective at the earlier of either of the following:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed.

(2) June 30, 2006.

(d) The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Chapter 3 (commencing with Section 9301), the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.



(e) Paragraph (2) of subdivision (c) applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9103 only to the extent that Chapter 3 (commencing with Section 9301) provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Chapter 5 (commencing with Section 9501) for an initial financing statement.

SEC. 50. Section 9707 of the Commercial Code is amended and renumbered to read:

9708. A person may file an initial financing statement or a continuation statement under this chapter if both of the following conditions are satisfied:

(1) The secured party of record authorizes the filing.

(2) The filing is necessary under this chapter to do either of the following:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001.

(B) To perfect or continue the perfection of a security interest.

SEC. 51. Section 9707 is added to the Commercial Code, to read:

9707. (a) In this section, “pre-effective-date financing statement” means a financing statement filed before the date that this section becomes operative.

(b) After the date this section becomes operative, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Chapter 3 (commencing with Section 9301). However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided by subdivision (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the date this section becomes operative only if any of the following occur:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in Section 9501.

(2) An amendment is filed in the office specified in Section 9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies subdivision (c) of Section 9706.



(3) An initial financing statement that provides the information as amended and satisfies subdivision (c) of Section 9706 is filed in the office specified in Section 9501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under subdivisions (d) and (f) of Section 9705 or Section 9706.

(e) Whether or not the law of this state governs the perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the date that this section becomes operative by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial filing statement that satisfies subdivision (c) of Section 9706 has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Chapter 3 (commencing with Section 9301) as the office in which to file a financing statement.

SEC. 52. Section 9708 of the Commercial Code is amended and renumbered to read:

9709. (a) This division determines priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, former Division 9 (commencing with Section 9101) determines priority.

(b) For purposes of subdivision (a) of Section 9322, the priority of a security interest that becomes enforceable under Section 9203 dates from July 1, 2001, if the security interest is perfected under this division by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under former Division 9 (commencing with Section 9101). This subdivision does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

SEC. 53. Section 12183 of the Government Code is amended to read:

12183. The Secretary of State shall charge and collect the following fees for certification:

(a) Certification of a document: Five dollars (\$5).

(b) Certificate of status or filing: Five dollars (\$5).

(c) Certificate of information: Ten dollars (\$10) if the request is communicated in writing, and five dollars (\$5) if the request is communicated by another medium authorized by a rule adopted by the office of the Secretary of State.

SEC. 54. Section 12194 of the Government Code is amended to read:

12194. The fees for filing liens pursuant to the Code of Civil Procedure and for filing financing statements and other Uniform Commercial Code filings are the following:

(a) Ten dollars (\$10) if the record is communicated in writing and consists of one or two pages.

(b) Twenty dollars (\$20) if the record is communicated in writing and consists of more than two pages.

(c) Five dollars (\$5) if the record is communicated by another medium authorized by a rule adopted by the office of the Secretary of State.

(d) Two dollars (\$2) if the record is a state tax lien certificate of release.

The Secretary of State shall collect a special handling fee for filing records in the manner provided in Section 12182.

Financing statements and other Uniform Commercial Code filings shall be submitted on national standard forms as approved by the office of the Secretary of State.

SEC. 55. Section 27291 is added to the Government Code, to read:

27291. (a) Notwithstanding any provision of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code or any other provision of law, a financing statement to perfect a security interest or agricultural lien may, at the election of the recorder and subject to the conditions of subdivision (b), be recorded instead of filed.

(b) A recorder may elect to record a financing statement if all of the following apply:

(1) The recorder employs a system of microphotography, optical disk, or other reproduction system that does not permit additions, deletions, or other changes to the permanent record of the original document.

(2) All film used in the microphotography process complies with minimum standards of quality approved by the United States Bureau of Standards and the American National Standards Institute.

(3) A true copy of the microfilm, optical disk, or other storage medium is kept in a safe and separate place for security purposes.

(c) A certified copy of any record stored or retained on microfilm, optical disk, or other reproduction system pursuant to this section shall be admissible in any court to the same extent as the original record.

SEC. 56. The provisions of this act, exclusive of Sections 18, 21, 24, 27, and 32 shall become operative on July 1, 2001.

